

The claimant appeared by and through his attorney, Brian D. Pistotnik, of Wichita, Kansas. The respondent and insurance carrier, appeared by and through their attorney, Ross A. Hollander, of Wichita, Kansas. There were no other appearances.

This is an application for review by the respondent from a preliminary hearing order granting claimant's request for a vocational evaluation/assessment pursuant to K.S.A. 44-510g.

RECORD

(1) The documents filed of record with the Division of Workers Compensation with this docketed matter including the transcript of preliminary hearing before Administrative Law Judge John D. Clark dated September 16, 1993, and exhibits attached thereto.

ISSUES

(1) Did the Administrative Law Judge exceed his jurisdiction in granting an Order for vocational evaluation and assessment during which time the Administrative Law Judge severely limited the medical information to be used by the vendor in performing this assessment?

(2) Does the Workers Compensation Appeals Board have the jurisdiction to decide this matter?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board finds:

(1) The Workers Compensation Appeals Board on review of any act, finding, award, decision, ruling or modification of findings or awards of the Administrative Law Judge, shall have the authority to grant or refuse compensation, or to increase or to diminish any award of compensation or to remand any matter to the Administrative Law Judge for further proceedings. 1993 Session Laws of Kansas, Chapter 286, Section 53(b)(1).

(2) Administrative Law Judge John D. Clark, in paragraph three of his order for vocational rehabilitation evaluation and assessment to be performed on the claimant, stated:

"3. All parties, within ten (10) days after the written notification of a qualified vendor, shall prepare and send any and all medical within their possession, that they wish the vendor to consider for the purpose of the report. Any medical received after that 10 days by the vendor, shall only be by the written consent of all parties involved. The vendor shall be limited to the medical received at the time unless otherwise agreed."

The Administrative Law Judge further ordered in paragraph nine:

"9. The costs of such evaluation shall be at the expense of the employer. Temporary Total Disability at the previous rate if Claimant is not working. Vendor to use restrictions of Dr. Lawrence Blaty."

The parties believed the last sentence of paragraph nine "Vendor to use restriction of Dr. Lawrence Blaty.", restricted the vendor to use only the medical reports of Dr. Blaty in preparing this evaluation and assessment. The language of paragraph three appears to directly conflict with the language of paragraph nine in requiring consideration by the vendor of all of the medical provided by the parties as requiring use of Dr. Blaty's restrictions. At this time the Appeals Board is unclear as to the intentions of the Administrative Law Judge in the creation of this Order. Without a clear understanding of the Administrative Law Judge's intentions it is impossible for the Appeals Board to determine if the Administrative Law Judge has exceeded his jurisdiction and is in violation of K.S.A. 1992 Supp. 44-534a(a)(2).

It is the decision of the Workers Compensation Appeals Board to remand this matter to the Administrative Law Judge for further proceedings, i.e., clarification of the Administrative Law Judge's Order of November 9, 1993.

WHEREFORE, it is the finding, decision and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark, dated November 9, 1993, shall be remanded back to the Administrative Law Judge for further clarification.

IT IS SO ORDERED.

Dated this _____ day of January, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Brian D. Pistotnik, 2831 East Central, Wichita, Kansas 67214
Ross A. Hollander, 500 North Market, Wichita, Kansas 67214
John D. Clark, Administrative Law Judge
George Gomez, Director